

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1045 - HB 1568

March 4, 2021

SUMMARY OF BILL: Specifies that hemp, products derived from hemp, and isolates other than delta-9 tetrahydrocannabinol are not subject to forfeiture based solely on their composition. Prohibits law enforcement searches based solely on the odor of the cannabis plant.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures –

Exceeds \$25,000/FY21-22 and Subsequent Years

Decrease State Expenditures – \$388,000 Incarceration**

Decrease Local Revenue – \$230,100/FY21-22 and Subsequent Years

Increase Local Expenditures –

Exceeds \$250,000/FY21-22 and Subsequent Years*

Decrease Local Expenditures – \$1,007,900/FY21-22 and Subsequent Years

Assumptions:

- The hemp and marijuana plant are both of the cannabis plant species and indistinguishable without lab testing; therefore, prohibiting a search by law enforcement based solely upon the detection of the odor of the cannabis plant, including the odor of any emissions produced only by the burning in or vaporization of the cannabis plant will lead to a decrease in state and local incarceration expenditures.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 1,841 simple possession or casual exchange Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of 18,410 convictions (1,841 / 10%) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-418.
- The proposed legislation will decrease misdemeanor violations related to Tenn. Code Ann. § 39-17-418 by an estimated 50 percent.
- The potential punishment for a Class A misdemeanor is up to 11 months, 29 days in jail, a fine up to \$2,500, or both.

- This analysis estimates 10 percent, or 1,841 (18,410 x 10%) offenders, currently pay an average \$250 fine for simple possession or casual exchange. The proposed legislation will result in a recurring decrease of local revenue estimated to be \$230,125 [(1,841 x 50%) x \$250].
- This analysis assumes 10 percent of offenders are spending an average of 15 days in local jail for Class A misdemeanor convictions of Tenn. Code Ann. § 39-17-418.
- Based on the 2020 Fiscal Review Committee survey, the weighted average cost to local governments to house an inmate in a local jail facility is \$73 per day.
- The proposed legislation will lead to a recurring decrease in local incarceration expenditures estimated to be \$1,007,948 [(\$73 x 1,841 offenders x 15 days) x 50%].
- The proposed legislation will decrease admissions for manufacturing, delivering, selling, or possessing with intent to sell marijuana.
- Pursuant to Tenn. Code Ann. § 39-17-417(g)(1), one commits a Class E felony for possessing marijuana in an amount between one-half ounce and 10 pounds.
- Based on information provided by the Department of Correction (DOC), there has been an average of 216.4 admissions per year for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and 10 pounds.
- It is assumed that the proposed legislation will reduce these admissions by 10 percent (216.4 admissions x 10% = 22 admissions).
- The average time served for a Class E felony is 0.60 years (219.15 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2021 is \$80.46.
- The proposed legislation will result in a recurring decrease in state incarceration costs by \$387,922 (22 admissions x 219.15 days x \$80.46).
- The proposed legislation will not reduce the courts', district attorneys', or public defenders' caseloads enough to require a reduction in workforce.
- The proposed legislation will make currently trained state and local law enforcement drug dogs incompatible, as they are unable to distinguish between hemp and marijuana.
- Local law enforcement will require a mandatory recurring increase in local expenditures estimated to exceed \$250,000 to train law enforcement drug dogs to distinguish between hemp and marijuana.
- State law enforcement will require a recurring increase in state expenditures estimated to exceed \$25,000 to train law enforcement drug dogs to distinguish between hemp and marijuana.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

***Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Bojan Savic". The signature is written in a cursive style with a large, stylized 'B' and 'S'.

Bojan Savic, Interim Executive Director

/jg